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POLK COUNTY, IA
2004 NOV 19 A 8:20
CLERK OF DISTRICT COURT
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CONSENT JUDGMENT

V.

Defendant.

- 1 -

successors, assigns, parent or controlling entities, and all other persons, corporations and other entities acting in concert or participating with Defendant who have actual or constructive notice of the Court's injunction are enjoined from engaging in the acts and practices set forth in the lettered subparagraphs below, to the extent the conduct in question is directed to an Iowa resident or performed by a person in Iowa in the course of Defendant's fundraising. For purposes of this injunctive paragraph and the lettered subparagraphs:

"Fundraising" means any and all forms of soliciting donations and/or raising funds for a donee organization, pursuant to an agreement that provides inter alia for how the proceeds of fundraising are to be divided between Defendant and the donee organization; "fundraising" includes without limitation the sale of event tickets or other merchandise in connection with supporting a donee organization.

"TSR" stands for Telephone Sales Representative, and includes each person who acts for Defendant, whether as an employee of Defendant, as an independent contractor, or as an employee of an independent contractor, in using the telephone to raise funds through direct contact with consumers.

"Consumer" includes each person who is contacted by representatives of Defendant and is solicited to support a donee organization by donating funds, making a purchase, or otherwise; "consumer" includes any person from whom such support is solicited, whether or not the person in fact provides any support.

"Donee organization" means any entity for which Defendant engages in fundraising.

A. Indicating that a TSR is a member of a donee organization, or is anything other than a paid professional fundraiser with no other connection to such entity.

B. Indicating that a substantial portion of a donation will go to the donee organization, or for a charitable or other purpose for which funds are solicited, if in fact less than 50 % of donated funds go to such entity or purpose after Defendant has received its share. Without limiting the foregoing, a representation by a TSR that a donor's check or donation will be sent directly to the donee organization, or that the donee organization controls the funds, is misleading unless accompanied by such additional explanation of the actual distribution of donated funds as is necessary to state how the funds are divided.

C. Indicating that the TSR is calling from some location other than the location from which the TSR in fact is calling.

D. Indicating that a donation will provide more of a benefit to the consumer's own community than is in fact the case.

E. Making any false representation of a material fact in the course of fundraising.

F. Failing to provide adequate training and supervision reasonably designed to prevent TSR's from engaging in abusive telemarketing practices, e.g., hanging up on consumers; abusive or insulting remarks; or refusing to answer proper inquiries.

G. Attempting to collect from a consumer on a supposed pledge when in fact the Xentel representative(s) making such attempt knew or should have known that the consumer did not make the pledge in question unless it is established that such attempt to collect was the result of a good faith error.

H. Failing to state during a fundraising call and prior to any solicitation of funds, that the caller is an employee of Xentel and that Xentel is a professional fundraiser.

I. Fundraising, on behalf of a group that holds itself out as one representing, assisting, or associated with fire fighters, in the area served by a fire department, if the head of such department (typically the fire chief) previously has submitted to Defendant a written request that Defendant (or the donee organization in question) not raise funds there. Plaintiff agrees not to initiate contact with any department or its officials for the purpose of soliciting the making of written requests as referred to herein; however, nothing herein shall prevent Plaintiff from otherwise informing anyone of any of the terms of this Consent Judgment.

J. To the extent that fundraising is undertaken on behalf of a group that holds itself out as one representing, assisting, or associated with a particular category of law enforcement or emergency services (e.g., sheriffs, sheriff's deputies, police, state troopers, highway patrol, paramedics, etc.), fundraising, in the community served by a law enforcement or emergency services agency in the same category, if the head of such agency previously has submitted to Defendant based on good and proper cause a written request that Defendant (or the donee organization in question) not raise funds there. Plaintiff agrees not to initiate contact with any agency or its officials for the purpose of soliciting the making of written requests as referred to herein; however, nothing herein shall prevent Plaintiff from otherwise informing anyone of any of the terms of this Consent Judgment.

K. Providing to TSRs, or any employee who directly supervises TSRs, any form of performance bonus, such as a pay boost, periodic bonus, or other financial incentive, based on the number of donations or dollar volume of donations pledged, or the number or dollar volume of donations received, unless the provision of such performance bonus is also expressly contingent on compliance by the TSR or supervisor receiving the bonus with the requirements of

this consent judgment, company policies, procedures and practices established and pursuant hereto and the laws of this State.

L. Failing to provide to the office of the Iowa Attorney General, within ten business days of receipt of a written (including faxed or e-mailed) request from that office, a list of TSRs (including last known addresses and phone numbers, and beginning and ending dates of employment) who left Defendant at any time in the sixty (60) days preceding receipt of the request, provided however that such request be made no more often than once each calendar year unless triggered by a complaint from an Iowa resident regarding Defendant's fundraising practices.

M. Failing to establish procedures, policies and practices reasonably designed to ensure that each telephone call made to an Iowa consumer is recorded, and that such recordings are preserved intact for at least ninety (90) days.

N. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, a faithful copy of the recording of a telephone solicitation directed to an Iowa resident by an employee or other representative of Defendant. To trigger this requirement, the Attorney General's written request must provide the name and telephone number of the Iowa resident, the substance of the complaint by the resident (as close to verbatim as possible), the date of the solicitation, and, if practicable, the approximate time of the solicitation, and must be received by Defendant (or Defendant's counsel) prior to the ninety-first day after the call was made.

O. Failing within thirty (30) days of entry of this Consent Judgment to implement a procedure under which Defendant's supervisory personnel listen to no fewer than one hundred (100) calls per month from each call center that is engaged in making calls to residents of Iowa,

and take appropriate measures to remedy any deviation on the part of TSRs from the requirements of this Consent Judgment.

P. Failing to adopt measures reasonably designed to ensure that all individual do-not-call requests from consumers are fully and immediately honored.

Q. Failing within thirty (30) days of entry of this Consent Judgment to implement hiring, training, supervision, monitoring, compensation, and subcontracting policies and practices reasonably designed to ensure that Defendant's employees, subcontractors, and other agents are in full compliance with the injunctive provisions of this Consent Judgment that apply or may apply to their conduct; provided, however, that this subparagraph shall not require such a degree of control over the policies and practices of independent contractors as would render such contractors employees for liability or other purposes.

IT IS FURTHER ORDERED that, in addition to whatever other legal remedies may be available, a violation of this Consent Judgment constitutes a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2003), and each violation by Defendant of this Consent Judgment, in a Consumer Fraud Act action by the Attorney General that establishes such violation by a preponderance of the evidence, may give rise to a civil penalty in the highest amount provided for by Iowa Code § 714.16 (7), namely \$40,000.00. To the extent that Plaintiff invokes this provision in connection with an alleged violation of subparagraphs A through J above, it will be a complete defense to the imposition of the penalty described in this paragraph that the violation was isolated and occurred in spite of procedures and policies reasonably designed to prevent such violations.

IT IS FURTHER ORDERED that Defendant pay to the Treasurer of the State \$30,000 for the consumer fraud enforcement fund referred to in Iowa Code § 714.16A (2003) in three

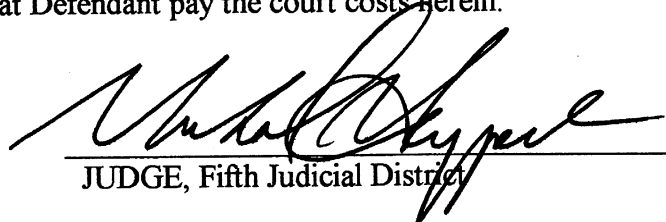
equal monthly installments of \$10,000 commencing within two weeks of the entry of this judgment.

IT IS FURTHER ORDERED that Defendant provide a copy of a concise summary explanation of the provisions of this Consent Judgment conforming to the document attached hereto as Exhibit A within fifteen (15) days after the Consent Judgment is filed to each TSR, and that Defendant provide Plaintiff within thirty (30) days of filing the affidavit of Defendant's president attesting to having done so; for persons who are hired or moved into TSR positions after the fifteen (15) days referred to above, Defendant shall provide them a copy of the summary referred to above within two (2) days of assuming the position.

IT IS FURTHER ORDERED that Defendant distribute a copy of this Consent Judgment within fifteen (15) days after its filing to each Xentel employee or independent contractor who directly or indirectly supervises the activities of TSRs ("covered positions"), and that Defendant provide Plaintiff within thirty (30) days of filing the affidavit of Defendant's president attesting to having exerted best efforts to ensure such distribution; for persons who are hired or moved into covered positions after the fifteen (15) days referred to above, Defendant shall provide them a copy of the Consent Judgment referred to above within two (2) days of assuming the covered position.

IT IS FURTHER ORDERED that the Court retains jurisdiction for purposes of enforcing this Consent Judgment.

IT IS FURTHER ORDERED that Defendant pay the court costs herein.



JUDGE, Fifth Judicial District

Approved:



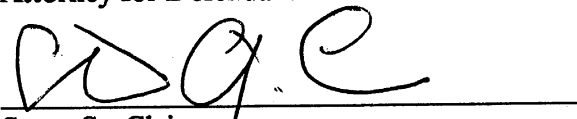
Michael P. Platz
Chief Executive Officer of Xentel, Inc.

Date: 11-2-04



Michael Reck
Attorney for Defendant

Date: 11/3/04



Steve St. Clair
Assistant Iowa Attorney General

Date: 11-19-04

EXHIBIT A

SUMMARY EXPLANATION OF SETTLEMENT AND CONSENT JUDGMENT WITH STATE OF IOWA

On _____, 2004, as part of a settlement of a lawsuit filed by the State of Iowa against Xentel, Inc., Xentel and the State agreed to the provisions of a consent judgment requiring employees or agents of Xentel to refrain from engaging in certain acts and practices in the course of telephone fundraising. The prohibited acts and practices include the following:

1. Indicating that a Telephone Sales Representative ("TSR") is a member of a donee organization, or is anything other than a paid professional fundraiser with no other connection to such entity.
2. Indicating that a substantial portion of a donation will go to the donee organization, or for a charitable or other purpose for which funds are solicited, if in fact less than 50 % of donated funds go to such entity or purpose after Defendant has received its share. Without limiting the foregoing, a representation by a TSR that a donor's check or donation will be sent directly to the donee organization, or that the donee organization controls the funds, is misleading unless accompanied by such additional explanation of the actual distribution of donated funds as is necessary to state how the funds are divided.
3. Indicating that the TSR is calling from some location other than the location from which the TSR in fact is calling.
4. Indicating that a donation will provide more of a benefit to the consumer's own community than is in fact the case.
5. Making any false representation of a material fact in the course of fundraising.
6. Hanging up on consumers; abusive or insulting remarks; or refusing to answer proper inquiries.
7. Attempting to collect from a consumer on a supposed pledge when in fact TSR knew or should have known the consumer did not make the pledge in question unless it is established that the attempt to collect was the result of a good faith error.
8. Failing to state during a fundraising call and prior to any solicitation of funds, that the caller is an employee of Xentel and that Xentel is a professional fundraiser.

As an employee or agent of Xentel you are prohibited, both by law and the policies and practices of the company from engaging in any of the above-stated acts or practices. Any violation of these prohibitions could result in legal liability or other consequences for Xentel and as a result, if you violate any of these rules relating to fundraising, you will be subject to immediate discipline up to and including termination of your employment with the company.